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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Wesley W. Harris, *et al.*,

Plaintiffs,

v.

Arizona Independent Redistricting Commission, *et al.*,

Defendants.

No. CV 12-00894-PHX-ROS-NVW-RRC

PLAINTIFFS' STATEMENT OF DISCOVERY DISPUTE

Assigned to District Judges Silver and Wake and to Circuit Judge Clifton

This is a dispute over taking the deposition of D.J. Quinlan. The relief requested is the right to take the deposition. It is necessary for these reasons: Nearly at the end of the map drawing process, around December 15, 2011, Commissioner McNulty provided Willie Desmond, the mapping consultant, with a thumb drive that made significant changes to Districts 8 and 11. At the deposition taken on March 7, 2013, at Tucson, Commissioner McNulty testified, "I don't recall whether I did it myself or whether I did it with D.J.'s help." D.J. Quinlan then was elections director for the Arizona Democratic Party, and now is its Executive Director. Commissioner McNulty also appears as one of Mr. Quinlan's *Facebook*™ friends.

The modification flipped party registrations in District 8, with Republican Party registration dropping from 36.2% to 28.5% of total registration, and Democratic Party registration increasing from 32% to 38%. It also underpopulated District 8, going from 3,262 over ideal to 4,873 under ideal. The ostensible reason was to make District 8 a Voting Rights Act district. That rationale makes little sense. For section 5 retrogression purposes, the IRC identified ten ability-to-elect benchmark districts, and it already had created what it claimed to be ten ability to elect districts in its evolving plan apart from District 8. Thus, even if District 8 turned into a voting rights district (which never happened), it could do nothing for section 5 purposes. It would be gilding the lily. For section 2 purposes, the IRC never had a study performed under *Thornburg v. Gingles*, 478 U.S. 30 (1986), and thus could not identify any districts to be drawn in compliance with section 2. At any rate, District 8 came nowhere near the 50% + 1 CVAP needed to qualify as a section 2 district under *Bartlett v. Strickland*, 556 U.S. 1 (2009).

This all leaves a very reasonable inference that the District 8 flip was motivated purely for partisan purposes, and that Democratic Elections Director Quinlan's hands were all over it. The Quinlan deposition may be the break that takes this case beyond circumstantial evidence to direct evidence. The deposition should provide answers.

CERTIFICATE

In conformance with Local Rule 7.2(j), undersigned counsel certifies that on March 8, 2013, he twice conferred personally with opposing counsel and despite sincere efforts to do so, was unable to resolve this discovery dispute short of Court intervention.

RESPECTFULLY SUBMITTED on March 13, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2013, I transmitted the foregoing document via fax to Chief Judge Silver's chambers at 602-322-7529, to District Judge Wake's chambers by email to wake_chambers@azd.uscourts.gov, and to Circuit Judge

Clifton's chambers at judge_clifton@ca9.uscourts.gov. I further certify that I sent a copy of the foregoing via email to the following:

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